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Collective Bargaining In United Kingdom Higher Education

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This article provides an overview of the collective bargaining system in United Kingdom (UK) higher education and considers some of the current challenges.⁴ The arrangements for determining the pay of staff in UK higher education reflect both the historical context of the UK funding system and the unique nature of UK industrial relations law. From World War II, the funding of UK higher education has predominantly come from central government spending with a strong central framework of policy and governance. Since the 1960s, the higher education sector has grown dramatically, both in terms of student numbers and the number of institutions, much of this as a direct result of central government intervention. The law, as with the rest of the UK economy, has played a very limited role in defining the relationship between higher education employers and unions and bargaining arrangements are largely based on voluntary agreements between the two parties. These two factors have created a system of pay determination that is rather unique, compared to other major international higher education providers. While the current collective bargaining system has delivered stability and affordability for higher education employers, recently announced changes to the funding arrangements in England and financial pressures in Scotland, Wales and Northern Ireland are placing new challenges on future pay determination.

Origins of the UK Higher Education Bargaining System

The origins of collective bargaining in United Kingdom higher education are found in the post-second world war political consensus, with the acceptance by government and employers of a legitimate role for employee representative organizations in the management of industry. Moves towards joint regulation and multi-employer collective bargaining had begun before World War I, but a unique feature of the UK industrial relations system is that neither side has favored the intervention of law into the employment relationship. It therefore remains the case that, while legal rights to union recognition have been put in place relatively recently, collective bargaining remains purely voluntary for the parties, and collective agreements generally remain legally unenforceable. Coverage by collective bargaining and union density has been on a downward trend in the UK since the early 1980s, especially in the private sector, and the number of employees covered by multi-employer collective bargaining fell from 60% in 1960 to just

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⁴ This paper is based on a presentation to the National Center for the Study of Collective Bargaining in Higher Education and the Professions Conference in New York in April 2011.

14% in 1998 (Brown et al, 2003), although it remains strong in the public services. The growth of individual employment rights, many arising from European-wide social legislation, has matched this gradual decline in union membership in the UK.

Multi-employer pay determination in higher education has existed since just after World War II, and until 2004 these arrangements reflected the structural diversity and origins of higher education institutions in the UK. The union organization of staff in higher education establishments began in the early 20th century and was divided between exclusive unions representing academic staff, and craft and general unions representing support staff. In general there were two main bargaining structures – that in the ‘old’ universities (established prior to 1992) and that in the ‘new’ institutions, previously known as ‘polytechnics’ or colleges of HE, originally under local government control and which have had independence and university status since 1992.

In general, multi-employer negotiations in the ‘old’ universities sector covered only pay while benefits were largely agreed locally (with the exception of the academic pension scheme). In the ‘new’ sector, both pay and benefits were determined centrally through a national contract (staff have remained members of the national pension schemes for school teachers and for local government staff). Until the creation of the Joint Negotiating Committee for Higher Education Staff (JNCHES) in 2001, there were ten separate negotiating groups, six in the ‘old’ sector, three in the ‘new’ sector in England and one in Scotland. These were largely differentiated by occupational classifications (e.g. academic staff, clerical staff, technicians etc). Around a fifth of staff were not covered by these national agreements, of whom the majority were covered by local institution agreements, and the rest were senior staff. This presented a highly complex system with particular issues around the potential risk from equal pay legislation (Bett, 1999).

Higher education is a major employer and an integral part of the UK’s knowledge economy as both a source of research, innovation, and enterprise and the education of highly skilled graduates. UK higher education provides over £59 billion of output (Kelly et al, 2009) and provides tuition to nearly two and a half million students, including over 500,000 post-graduates and 400,000 non-UK domiciled (“international”) students. The sector is a major employer with a core workforce of 381,790 employed across 166 institutions, including 181,185 academic staff (HESA, 2012a). The vast majority of these institutions are autonomous, private not-for-profit organizations, albeit operating under considerable government regulation. ‘Private’ higher education institutions exist but are noticeably different from those in the USA, tending to provide specialist tuition in professional subject areas such as accountancy and law and, for the present, generally lacking their own degree awarding powers.

Higher education institutions (HEIs) have diversified their income streams in recent years although they still remain dependent on income from tuition fees, research and teaching grant funding. In 2010-2011, tuition fees and education contracts comprised 33 % of income while funding body grants represented 32%, research grants and contracts 16% and other income

sources, including endowment and investment income, 19% (HESA, 2012b). The proportion of income from public sources has fallen from 61% in 2004-2005 to 56% in 2008-2009 (HESA, 2010). International student fees have been the most significant area of income growth in the past decade, although the variation in international fee income between institutions is considerable.

Bargaining developments since 1997

The single collective bargaining structure created in 2001, the Joint Negotiating Committee for Higher Education Staff (JNCHES), followed major structural changes in the sector, with the formation of a single funding system bringing together different types of HEI and the creation of the Universities and Colleges Employers Association (UCEA) as a single employers' association in 1994. It also followed the publication of the 1997 Dearing Report (Dearing 1997) and the report of the Bett Review of Higher Education Pay and Conditions (Bett 1999).

The Dearing Report noted the relative decline in higher education pay against other sectors and suggested that the arrangements for determining pay and conditions were hindering the development of the sector. The Bett Committee was established to take forward Dearing's concerns. It found a complex picture, with marked differences between job classifications and job sizes between institutions. While noting the general decline in higher education relative pay, it found the biggest disparities at either end of the pay spectrum – manual workers at the bottom and professors and senior managers at the top. A study by the Hay Group, an HR consultancy, of pay relativities for the Committee indicated that employees in the middle of the occupational spectrum were generally in line with their external benchmarks but that researchers were generally underpaid in comparison to their wider economy counterparts, as were some administrative staff. The Bett report made recommendations for the establishment of a new national joint council covering the whole of the higher education sector and the harmonization of terms and conditions for the various occupational groups on to a single pay spine⁵, including a reduction in hours for manual workers.

Following the Bett report, negotiations between the trade unions and UCEA over two years resulted in the establishment of JNCHES in 2001. The agreement to establish JNCHES made explicit the wish to create a new single pay determination system, including a national, single pay spine (i.e. a 51 point scale) and the agreement of new job-evaluated structures at the individual institutional level. The move towards a single pay spine for all staff sought to address both employers' and union concerns. The employers wished to remove potential gender inequalities in pay and the risk of legal action; create simpler and more transparent pay and job classification structures; introduce more flexible pay progression systems based less on service and more on contribution; link local pay structures more closely to institutional priorities; and address specific, uncompetitive pay levels through targeted market pay supplements. The unions

⁵ 'Pay spine' here refers to a series of 51 incrementally spaced salary points that institutions use in determining their local pay scales. The pay spine figures are up-rated annually following collective bargaining with the trade unions.

also wished to address equal pay issues; improve pay levels, especially for the lowest paid; develop more harmonized and transparent conditions of service; and defend the concept of national pay determination against perceived moves towards local pay bargaining (UCEA, 2008).

The result was the Framework Agreement for the Modernisation of Pay Structures in HE, finally agreed in 2004. Reaching agreement was a lengthy business. Most unions had agreed by the end of 2003 but the main academic union in the pre-1992 sector, the Association of University Teachers (AUT), began industrial action and did not finally reach agreement until March 2004. The agreement's main elements were:

- A single 51 point pay spine, to be reviewed through JNCHES each year;
- Determination of job classification systems at local institutional level, using job evaluation/role analysis and the new pay spine as the 'framework' for local arrangements;
- Harmonization of the working week for those staff with a defined working week (primarily support staff);
- Attraction and retention premiums where labour market conditions dictate;
- Action to foster equal opportunities and ensure equal pay for work of equal value;
- Access to staff development and review for all staff.

The current pay bargaining arrangements could therefore be described as a hybrid between centralization and devolution. In reality the only element negotiated at multi-employer level is the increase in the national pay spine. All other pay matters (and conditions) are dealt with at institutional level apart from academic pension schemes (which remain largely national in scope).

The implementation of the Framework Agreement coincided with the introduction of a new system of student loans and fees which brought a significant amount of new money into the sector. The academic unions declared their wish to ensure that a third of the new money was spent on staff and declared an industrial dispute over the 2006 pay negotiations. The dispute was not helped by a merger of the two main academic unions during the dispute, the National Association of Teachers in Further and Higher Education (NATFHE) and the AUT. This was a particularly difficult dispute which tested the bargaining machinery but a final deal was reached that provided for staged increases over three years, providing a minimum cumulative increase of 13.0%. Over the period 2006 to 2009, these pay increases plus local Framework Agreement implementation made a major impact in addressing the issues of pay comparability identified by Dearing and Bett. The changing external economic environment, cuts in funding and caps on student numbers since then, however, have led to relatively low increases in the pay spine (0.5% in 2009, 0.4% in 2010 and a flat-rate £150 on all points in 2011 worth around 5% on the national pay budget).

Two reviews were also provided for in the 2006-09 agreement – the first was a joint review of higher education finance and pay data to inform future negotiations and the second a review of the JNCHES machinery. The Finance and Pay Data Review took place over 2007-08 and provided much new data on both the financial health of UK HEIs and the relative levels of pay in the higher education sector. The review found that there had been significant progress in improving relative pay levels since 2001 when JNCHES was established, with the biggest winners being part-time staff and the lowest-paid (due to Framework implementation and some bottom weighting of the 2006-09 increases). The earnings of academic staff were found to rank fifth highest in a table of 44 professional occupations in the UK and academic salaries had increased by an average 28% between 2002 and 2007. A comparison using national pay data found that support staff salaries in higher education were highly competitive with similar roles outside HE.

The second review resulted in a streamlined “New JNCHES” with the end of separate ‘interim’ committees for academic and support staff and a new disputes machinery (with potential recourse to external mediation). UCEA also took the opportunity to tighten up processes to improve employer coordination during negotiations and disputes. Despite a few institutions declaring their wish to withdraw from collective negotiations during the 2006 dispute, UCEA’s subsequent consultation on future bargaining arrangements found the vast majority of HEIs wished to stay inside the national fold.

Current Challenges

It is impossible to understand the current challenges facing the multi-employer bargaining arrangements in the UK academy without reference to existing financial challenges and future reforms. Following the recommendations of the ‘Browne Review’ of higher education funding and student finance (Browne, 2010), the UK government announced in a white paper that undergraduate tuition fees in England would be increased from £3,290⁶ to a maximum of £9,000 (BIS, 2011) and that the teaching grant would be reduced by 80%⁷ over the period 2012-2014. This is estimated to save the government £3 billion annually by 2014-15. The white paper also announced changes to the allocation of student numbers and shifts in regulation to encourage greater diversity in higher education provision, both of which have implications for HEI funding. Although Scotland, Wales and Northern Ireland are not directly affected by these reforms, they face similarly difficult choices about the future allocation of funding.

⁶ Student contributions to tuition date back to the ‘Dearing report’ (1997), which acknowledged the lack of adequate investment in higher education in light of significant increases in student numbers and recommended that students should pay a quarter of the cost of tuition. Dearing’s recommendations led to the introduction of means tested tuition fees of £1,000 in 1998 through the Teaching and Higher Education Act 1998. This was soon followed by the introduction of ‘variable’ tuition fees in 2004 through the Higher Education Act 2004, which allowed universities to set their own fees with a cap of £3,000, which, adjusted for inflation, has been the standard annual undergraduate tuition fee for most institutions to date.

⁷ This includes a withdrawal of all funding for teaching except for strategic and vulnerable subjects.

The potential impact of the funding changes is still uncertain, but the diversity of institutional circumstances and income streams at present means that there will undoubtedly be a differential impact.⁸ Further stratification of the sector, or polarization as predicted by Thompson and Bekradnia (2011), could weaken the case for multi-employer negotiations if institutions are faced with considerably different financial outlooks.

The strength and membership of the current arrangements is by no means guaranteed and the reforms to higher education funding may provide a window for some institutions to break away, as Imperial College London did when the National Framework was implemented in 2004. The new funding regime could strengthen the financial situation of some institutions and the flexibility afforded by local bargaining may be attractive to both staff and employers in these institutions to improve local salaries and engage in genuine productivity bargaining. The extent to which this will occur is difficult to predict and the pressure on those institutions that leave to provide pay awards significantly above the national award will be strong. In general, moves away from multi-employer bargaining in the UK have been prompted by individual organizations wishing to pay more in return for local concessions, rather than to pay less. National trade unions remain publicly committed to national bargaining, but even they recognize the possibility of a change in 2012 (Hunt, 2011).

The pressures are not purely financial. The introduction of more private providers into the higher education market, an objective of the current reforms, may also place pressure on the multi-employer system, although the level of pressure will depend on the extent to which these providers actually compete with other institutions. In the hiring of academic staff, there are indications that the private providers may be operating in rather different labour markets as compared with state-funded institutions although primarily this affects teaching staff rather than research-active staff.

Despite these pressures, a change in the current bargaining arrangements is not a foregone conclusion; indeed the system has withstood numerous internal and external shocks in the past and still serves 151 institutions in the UK. The institutions that already conduct local bargaining tend to offer above-market salaries meaning that only those institutions in strong financial shape are likely to see a benefit to going it alone. Moreover, given the low settlements in recent years, there is currently no strong incentive to leave in order to restrain staff costs.

Trade union membership and institutional recognition of unions also remains relatively strong in the sector. According to a survey conducted in 2009 by UCEA and ballot data from the Electoral Reform Services, union density is between 35-39% among academic staff in the sector and around 30% for support staff, although there are wide variations between institutions. The

⁸ The institutions that comprise the sector are not only diverse in their missions and size but also in their financial security. For example, institutional borrowing as a proportion of income varies from zero to over 70% in four institutions (UUK, 2010 patterns of HEIs in the UK).

UCU General Secretary has, of course, reminded us that unions “will not go away” if institutions choose to bargain locally.

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